

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

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Court of Appeals, District of Columbia

OCTOBER TERM, 1908.

No. 1940.

581

ISAAC B. BURSEY, APPELLANT.

vs.

ISAAC S. LYON.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF COLUMBIA

FILED AUGUST 12, 1908.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

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In the Court of Appeals of the District of Columbia.

No. 1940.

ISAAC B. BURSEY, Appellant,

vs.

ISAAC S. LYON.

a Supreme Court of the District of Columbia.

At Law. No. 49305.

ISAAC S. LYON, Plaintiff,

vs.

ISAAC B. BURSEY, Defendant.

UNITED STATES OF AMERICA, *District of Columbia*, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Declaration.*

Filed March 25, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49305.

ISAAC S. LYON

vs.

ISAAC B. BURSEY.

1. The plaintiff Isaac S. Lyon sues the defendant Isaac B. Bursey to recover possession of an undivided one half of all that piece or parcel of land and premises situate on Fifth street Northeast, in the City of Washington, District of Columbia and known and distinguished as the North one half of original Lot numbered seven (7) in square numbered Eight Hundred and thirty-four (834) in said city and District, in which the plaintiff claims an estate in fee simple, and of which he was lawfully seized and possessed on to wit, the 1st day of October, 1905, when the defendant wrongfully

entered the same, and wrongfully ejected the plaintiff therefrom, and thenceforward has wrongfully detained the same, and still wrongfully detains the same from the plaintiff, and is wrongfully exercising acts of ownership thereon, and the plaintiff is entitled to possession of said undivided one half interest.

And the plaintiff claims possession of said undivided one half part of said described land and premises with the improvements and appurtenances besides costs of suit.

2. And plaintiff sues the defendant for rent, use and occupation, and for mesne profits of said undivided one half part of said North half of original Lot numbered seven (7) in square numbered Eight Hundred and thirty four (834) situate on Fifth street Northeast in the City of Washington, District of Columbia from to wit, the 1st day of October 1905. And plaintiff claims \$300.00 besides costs of suit.

ISAAC S. LYON, *Plaintiff*.

The defendant is to plead hereto on or before the twentieth day exclusive of Sundays and legal holidays, occurring after the day of the service hereof otherwise judgment.

ISAAC S. LYON, *Plaintiff*.

Plea.

Filed April 16, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49305.

ISAAC S. LYON, Plaintiff,

vs.

ISAAC B. BURSEY, Defendant.

The defendant for plea to the declaration, and each of the counts thereof, says he is not guilty in the manner and form as therein alleged.

WM. HENRY WHITE,
Attorney for Defendant.

J. R. C.

3 Service of a copy of the above plea acknowledged this 16th day of April, A. D. 1907.

ISAAC S. LYON, *Plaintiff*.

Joinder in Issue.

Filed April 17, 1907.

In the Supreme Court of the District of Columbia.

At Law. No. 49305.

ISAAC S. LYON, Plaintiff,

vs.

ISAAC S. BURSEY, Defendant.

The plaintiff joins issue upon the defendant's plea.

ISAAC S. LYON, *Plaintiff.*

Take notice that the issued join- in this cause will be tried at the next October term of this Court.

ISAAC S. LYON, *Plaintiff.*

To Wm. H. White, Esq., Att'y for Defendant.

The title of this cause is as above

The Att'y for plaintiff is Isaac S. Lyon

The Att'y for defendant is Wm. H. White

Last pleading filed April 17, 1907.

ISAAC S. LYON, *Plaintiff.*

4

Memorandum.

1908, May 26.—Verdict for Plaintiff for possession of property in controversy and \$129 damages.

Supreme Court of the District of Columbia.

FRIDAY, *June 5, 1908.*

Session resumed pursuant to adjournment, Mr. Justice Wright, presiding.

* * * * *

At Law. No. 49305.

ISAAC S. LYON, Pl'tf,

vs.

ISAAC B. BURSEY, Def't.

Upon hearing the defendant's motion for a new trial, it is considered that the same be, and hereby is overruled, and judgment on verdict ordered.

Therefore, it is considered that the plaintiff recover against said defendant possession of all that piece or parcel of land situate in the City of Washington, District of Columbia, known and described

as an undivided one half of all that piece or parcel of land and premises situate on Fifth Street, Northeast, in the City of Washington, District of Columbia known and distinguished as the North one half of original lot numbered Seven (7) in Square Numbered Eight Hundred and thirty four (834) in the said City and District, and One hundred and twenty nine dollars (\$129) for rent, use and occupation and mesne profits as aforesaid, assessed together
 5 with his costs of suit, to be taxed by the Clerk, and have execution thereof.

The defendant notes an appeal to the Court of Appeals of the District of Columbia, and upon motion the penalty of the bond on said appeal to act as a Supersedeas is hereby fixed in the sum of Five hundred dollars (\$500), or, in lieu thereof a cost bond in the sum of One hundred dollars (\$100).

Memoranda.

1908, June 18.—Appeal bond filed.

1908, July 10.—Time to file record extended to August 15, 1908, inclusive.

Supreme Court of the District of Columbia.

TUESDAY, *July* 14, 1908.

Session resumed pursuant to adjournment, Mr. Justice Wright, presiding.

At Law. No. 49305.

ISAAC S. LYON, Pl'tf,

vs.

ISAAC B. BURSEY, Def't.

Now comes here the defendant by his Attorney and prays the Court to sign, seal, and make part of the record, his bill of exceptions taken during the trial of this cause, now for then, which is accordingly done.

6

Bill of Exceptions.

Filed July 14, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49305.

ISAAC S. LYON, Plaintiff,

vs.

ISAAC B. BURSEY, Defendant.

Be it remembered, that the above entitled cause came on for trial before Mr. Justice Wright and a jury on Tuesday, May 26, 1908,

and thereupon, after the jury had been sworn to try the issues joined in said cause, the plaintiff, to maintain the issues on his part joined, gave in evidence the testimony of WILLIAM E. AMBROSE, who testified that he is a member of the bar, and knows the defendant, whom he met at defendant's residence about November 1, 1905, when they had a conversation about the lot in suit, which is the lot just north of defendant's residence.

Thereupon the witness was asked the following questions and made the following answers, to each of which the defendant by his counsel duly objected on the ground that the statements of defendant are inadmissible to fix title in him; but the court overruled the objections and allowed the questions to be answered, to which ruling the defendant duly excepted:

7 Q. On that occasion what did he say in respect to the nature of his title? A. I understood him to say that he held under a certain deed—I asked Mr. Bursey whether or not he claimed the lot north of the house which he and his wife occupied, which house he claimed to be the property of his wife. He stated that he had bought this property from Nellie M. Simmons, and that it came through a tax deed, and that he owned it from that conveyance.

Q. Did he make any statement as to the title under which he took possession of the property? A. He stated he took it under a deed from Nellie and Leo Simmons. It was executed by both and delivered to him.

Upon cross-examination this witness testified that the defendant did not show him any deed, but told him the deed was in the record office, and that on the strength of this deed he had enclosed the lot about a year before, and used it as a lumber storage yard. Witness further said he knew nothing of the possession by defendant except what defendant said.

The defendant was not present during the trial of this cause.

Thereupon the defendant by his counsel moved to strike out this testimony on the ground that defendant's statements are inadmissible to fix title in him, but the court overruled the motion, to which ruling defendant duly excepted.

8 Plaintiff next offered in evidence the notes made by the court from defendant's testimony in the case of Lyon vs. Bursey, At Law, No. 48,112, in the Supreme Court of the District of Columbia, being at that time an action to recover the whole interest in the property of which an undivided one-half is claimed in this suit, to which counsel for defendant objected on the ground that the same are not proper evidence, being only a memorandum made before the present suit was brought, particularly that part relating to the possession, and further objected that the declarations of defendant are inadmissible to fix title in him; but the court overruled the objections and read the said notes to the jury as follows (defendant's counsel waiving the administration of oath to the Court):

The COURT: The notes read: "On the 11th day of June 1906, in the trial of an ejectment suit entitled Lyon *vs.* Bursey, that I. B. Bursey was called as a witness for plaintiff, and testified that he is in possession of the north half through a deed from Mrs. Simmons: that the deed is lost and not recorded."

To the reading of the above to the jury counsel for defendant duly excepted.

Plaintiff's counsel next offered a certified copy from the Land Records of the District of Columbia of a deed dated May 30, 1839, from Nathaniel Brady to William S. Walker purporting to convey the property involved in this suit and other property. Counsel for defendant objected on the ground that said deed was not a part of a chain of conveyances from the sovereignty to the plaintiff; whereupon counsel for plaintiff announced that the plaintiff relied upon

9 proof that plaintiff and defendant claim under said William S. Walker as common source of title. The objection was overruled and the copy admitted in evidence, to which counsel for defendant duly excepted.

Counsel for plaintiff thereupon offered in evidence the deposition of Thomas D. Walker taken in the case of Lyon *vs.* Bursey, At Law, No. 48,112, who testified that William S. Walker died July 1, 1844, intestate, leaving a widow who has since died, and as his heirs six children, as follows:

George, who died in 1845 or 1846, unmarried and intestate; Elizabeth, who died intestate and childless, more than fifty years ago, leaving a husband who has since died; William R. Walker, who died in 1891, intestate, and leaving a widow, Eliza, and three children, Virginia or Jennie, Elizabeth or Lizzie, and Olive; Mary Ellen Walker, who died intestate and without issue January 6, 1893; Almea V. Davis who died in 1898, and the witness. He also testified that he has had a general acquaintance with the property involved in this suit since the fifties and early sixties, and that the whole section out there was then in a wild state, with no improvements anywhere on the west side of the square, and none on the lot in question.

Counsel for plaintiff next introduced in evidence certified copies from the Land Records of the District of Columbia — deeds purporting to convey interests in fee in the whole of Lot 7, Square 834, as follows:

From William R. Walker and wife to James B. Davis, dated May 18, 1888, an undivided one-fourth interest.

10 From Almea V. Davis and James B. Davis, her husband, and James B. Davis in his own right and Almea V. Davis, his wife, to Bartow L. Walker and John H. Walter, dated June 15, 1888, an undivided one-half interest.

From John H. Walter to Bartow L. Walker, dated May 10, 1890, quitclaim.

Counsel for plaintiff next introduced in evidence certified copy from the Land Records of the District of Columbia of a deed from Bartow L. Walker to Paul J. Brandt dated November 1, 1894, re-

corded December 11, 1894, at 10:42 a. m., purporting to convey in fee the property therein described as follows:

"the following described land and premises, situate lying and being in the City of Washington and District of Columbia, and distinguished as being all the right, title & interest of the said party of the first part of, in & to all the real estate situate in the District of Columbia."

Counsel for plaintiff next introduced in evidence certified copy from the Land Records of the District of Columbia of a deed of trust from Paul J. Brandt, unmarried to Bartow L. Walker, Trustee, dated November 1, 1894, the material parts of which are as follows:

"This Indenture made this first day of November, in the year of our Lord, one thousand eight hundred and ninety-four, by and between Paul J. Brandt of Washington D. C., the said Brandt being unmarried, of the first part, and Bartow L. Walker, trustee, party of the second part:

Whereas, the said Paul J. Brandt is justly indebted unto
11 Archibald C. Walter in the full sum of twenty-five thousand (\$25,000) dollars, * * * payable in five years after date with interest thereon until paid at six per centum per annum, interest payable semi-annually.

And Whereas, the party of the first part desires to secure the prompt payment of said debt * * *

Now, Therefore, This Indenture Witnesseth, that the party of the first part, in consideration of the premises, and of one dollar * * * does by these presents give, grant, bargain and sell, alien, enfeoff, release and convey unto the party of the second part, his heirs and assigns, the following described land and premises, situate in the District of Columbia and designated as all the right, title and interest of the said party of the first part of, in and to all the real estate in said District, together with all and singular the improvements * * *

To Have and to Hold the said land * * * unto and to the only use of the party of the second part, his heirs and assigns, in and upon the trusts, nevertheless, hereinafter declared, that is, in trust to permit said Paul J. Brandt, his heirs or assigns, to use and occupy the said described land and premises and the rents, issues and profits thereof, to take, have and apply to and for his or their sole use and benefit, until default be made in payment of said promissory note hereby secured, or any instalment of interest thereon, when and as the same shall become due and payable, or any proper cost, charge, commission or expense in and about the same.

12 And upon the full payment of all the said note and the interest thereon, and all other proper costs, charges, commissions and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said Paul J. Brandt, his heirs and assigns, at his or their cost.

And upon this further trust, upon any default or failure being made in the payment of said note * * * then and at any time thereafter, to sell the said described land and premises, at public

auction * * * and to convey the same in fee simple to and at the cost of the purchaser * * * and of the proceeds of said sale or sales, firstly, to pay all proper costs, charges and expenses, including all taxes, * * * and to retain as compensation a commission of three per centum on the amount of the said sale or sales; secondly, to pay whatever may then remain unpaid of the said note and the Interest thereon, * * * and lastly, to pay the remainder of said proceeds, if any there be, to said Paul J. Brandt, his heirs and assigns," * * *.

Acknowledged before a Notary Public December 11, 1894.

Recorded December 11, 1894 at 10:44 a. m. in Liber 1967, folio 346.

Counsel for plaintiff next offered in evidence a paper purporting to be a certified copy from the records of the State of Virginia of the charter of the Virginia-Alabama Company, a corporation, 13 to the admission of which in evidence counsel for defendant objected on the grounds that said corporation had not power to take or convey title in the District of Columbia, and that said copy was not properly certified, the said certificate purporting to be under the lesser seal instead of the great seal of the State, and by the Secretary of State without showing the authority of such person to make any such certificate; but the court overruled the objection and admitted the said copy in evidence, to which ruling counsel for defendant duly excepted. The authority purporting to be conferred as shown by said copy and said certificate *are* as follows:

"(a) To acquire, hold, own and dispose of real estate, in fee simple and less estates, including equities and undivided interests therein, by grant, purchase, voluntary conveyance, sale, exchange, lease, and otherwise." * * *

"4th. The real estate to be held by the company shall not exceed five thousand acres in Virginia, five thousand acres in Alabama, five hundred acres in the District of Columbia, and five thousand acres in any one of the other states or territories of said United States."

"COMMONWEALTH OF VIRGINIA:

I, J. T. Lawless, Secretary of the Commonwealth of Virginia, certify that the foregoing is a true copy of the charter of Virginia-Alabama Company, on file and of record in this office.

Given under my hand and the Lesser Seal of the Commonwealth at Richmond, this 18th day of December, A. D., 1894.

[SEAL.]

J. T. LAWLESS,
Secretary of Commonwealth."

14 Counsel for plaintiff next offered in evidence certified copy from the Land Records of the District of Columbia of a deed of release dated December 29, 1894, from Bartow L. Walker, trustee, to the Virginia Alabama Company, a corporation, the material parts of which are as follows:

"Know All Men by These Presents; That Bartow L. Walker, trustee under a certain deed of trust from Paul J. Brandt dated November 1, 1894, and recorded December 11, 1894, in Liber 1967, folio 346 *et seq.* of the Land Records of the District of Columbia, in consideration of one dollar current money to him in hand paid by the Virginia Alabama Company, a corporation duly created and existing under the laws of the State of Virginia, receipt whereof, before the delivery of these presents, is hereby acknowledged, has released, remised and conveyed, and does hereby release, remise quitclaim and convey unto the Virginia Alabama Company, heirs and assigns, the following described land and premises situate, lying and being in District of Columbia and distinguished as all the property described in the above trust & dated & recorded as aforesaid.

To Have and to Hold the same with the appurtenances unto and to the use of the said company, its successors and assigns forever, fully released and discharged from the effect and operation of said deed of trust, the party secured thereby having been fully paid.

15 Witness my hand and seal this 29 day of December, A. D. 1894.

BARTOW L. WALKER, *Trustee*. [SEAL.]"

Acknowledged before Notary Public December 29, 1894.

Recorded December 29, 1894, in Liber 1984, folio 27.

To the admission of this release in evidence counsel for defendant objected on the ground that it did not convey such title or right of possession as would enable the grantee or the plaintiff claiming under it to maintain the action of ejectment; but the court overruled the objection and admitted the same in evidence, to which ruling defendant's counsel duly excepted.

Counsel for plaintiff next offered in evidence the bill, answers and decree in Equity Cause No. 16,513 in the Supreme Court of the District of Columbia; but the court sustained defendant's objection that the decree relates to south half of Lot 7, Square 834, only, and does not mention the north half, the land involved in this suit.

Counsel for plaintiff next offered in evidence certified copy from the Land Records of the District of Columbia of a deed from the Virginia-Alabama Company dated June 6, 1896, purporting to convey, among other property, an undivided moiety in said Lot 7, Square 834, to Michael J. Colbert, Leo Simmons, and John Ridout, trustees appointed by decree in Equity Cause No. 16,513, with full power to make partition of said lot with the owner of the
16 other moiety. To the admission of this deed in evidence counsel for defendant objected on the grounds that the trustees had no power or authority to take title or make partition, and that the Virginia-Alabama Company had no authority to convey real estate in the District of Columbia, nor to convey such title as would enable the grantees, or those claiming under them, to maintain the action of ejectment; but the court overruled the objection and ad-

mitted the said copy in evidence, to which counsel for defendant duly excepted.

Counsel for plaintiff next offered in evidence certified copy from the Land Records of the District of Columbia of a tax deed dated March 3, 1903, from the Commissioners of the District of Columbia to Isaac S. Lyon of the second part and John Ridout, Michael J. Colbert, and Leo Simmons, trustees, of the third part, purporting to convey said Lot 7, Square 834, one half to be held by said Lyon and one half by said trustees, as tenants in common, "the undivided interest hereby conveyed to said parties of the third part, their heirs and assigns, to be held by them upon the uses and trusts set out in the decree in Equity Cause 16,513, in the Supreme Court of the District of Columbia, in which they were appointed trustees." The deed recites that said lot "was duly assessed for taxation in the name of B. L. Walker and others, and in the name of A. T. Bramhall for the fiscal years" ending June 30, 1890 and 1892; that the taxes were not paid and after advertisement the lot was sold April 7, 1891, to "F. G. Aukam, the highest bidder therefor, at and for the sum of \$16.85," the amount of tax for year 1890 with penalties and costs, and the lot was again sold to said Aukam April 13, 1893, 17 for \$16.57, the amount of taxes for year 1892 with penalties and costs. The deed recites the issuance of the certificates of sale to Aukam and says, "the said F. G. Aukam has duly assigned his certificates of sale and all his right, title and interest thereunder to Isaac S. Lyon, party of the second part, and to John Ridout, Michael J. Colbert and Leo Simmons, trustees in Equity Cause No. 16513 in the Supreme Court of the District of Columbia, parties of the third part, as is evidenced by his assignments duly endorsed on said certificates."

To the admission of this deed in evidence counsel for defendant duly objected on the ground that this is a tax deed, and is void on its face because of the recital of the assessment, sale, certificates of sale, and assignments thereof. The following also occurred at this time:

"Mr. WHITE: I reserve the right to offer proof to show that the tax sale was not properly reported within the time required by law, and to make further objection to this deed."

But the court overruled the said objection and admitted the said deed in evidence, to which ruling the defendant by his counsel duly excepted.

Counsel for plaintiff next offered in evidence certified copy from the Land Records of the District of Columbia of a deed dated March 10, 1903, from Michael J. Colbert, Leo Simmons and John Ridout, as trustees under the decree in Equity Cause No. 16,513, and under the deed from the Virginia-Alabama Company to Michael J. Colbert, Leo Simmons and John Ridout, trustees, purporting to 18 convey the property involved in this suit to Isaac S. Lyon, and reciting that the object of the deed is to make a division by the mutual exchange of deeds so that said trustees and said Lyon may hold in severalty. To the admission of this copy in evi-

dence counsel for defendant duly objected on the grounds that said trustees had no authority to make such division or partition, or to convey any title to the property involved in this suit under said decree, and that they had no such title or right of possession under the deed from the said Virginia-Alabama Company as would enable either of them or their grantee to maintain the action of ejectment; but the court overruled the objection and admitted the said copy in evidence, to which ruling counsel for defendant duly excepted.

Counsel for plaintiff next offered in evidence certified copy from the Land Records of the District of Columbia of a deed dated March 10, 1903, from Isaac S. Lyon and wife to Michael J. Colbert, John Ridout and Leo Simmons as trustees in Equity Cause No. 16,513, purporting to convey the south half of said Lot 7, Square 834, and reciting that the object of said deed is to make an equal division by mutual exchange of deeds so that said Lyon and said trustees may hold in severalty. Counsel for defendant duly objected on the ground that the south half of said lot is not involved in this suit and that the said trustees had no authority to take such title or to make such partition or division; but the court overruled the said objection and admitted said copy in evidence, to which ruling the counsel for defendant duly excepted.

19 Counsel for plaintiff again offered in evidence the bill, answers and decree in Equity Cause No. 16,513, to the admission of which in evidence counsel for defendant objected on the grounds that they do not authorize the partition of said Lot 7, Square 834, or a sale or conveyance of the north half thereof, or repose in said trustees any title, right or interest in the north half of said lot, or authority to take any such title or interest; but the court overruled the said objection and admitted said bill, answers and decree in evidence, to which ruling counsel for defendant duly excepted.

The substance of said bill, answers and decrees, so far as material in this cause, is as follows:

The complainant in the bill filed June 7, 1895, is Genevieve E. Walker, by James K. Kelly, her next friend, and the defendants are Bartow L. Walker, The Virginia-Alabama Company, a corporation created under the laws of the State of Virginia, and Paul J. Brandt.

The bill alleges that defendant Walker is the husband of complainant; that complainant had a sole and separate estate at the time of her marriage amounting to \$51,108.86, out of which moneys she gave defendant Walker as trustee at different times sums aggregating \$31,624.33 to invest and reinvest for, and to account therefor to her, that with the moneys so received he purchased real estate and notes and sold and resold the same in his own name; that he had no money of his own and always until recently admitted liability unto complainant and promised to account; that he has in-

20 terest in real estate in the District in his name and in the name of others which is really the property of complainant, representing original trust fund and accretions, and that for the purpose of hindering and delaying complainant in the assertion of her rights he executed deed dated November 1, 1894, acknowledged

and recorded December 11, 1894, and conveyed to Paul J. Brandt, his clerk, all of his real estate in the District of Columbia. (This is the deed recorded in Liber 1967, folio 344, mentioned above), and that Brandt gave a deed of trust dated November 1, 1894, and recorded December 11, 1894, conveying the real estate to Walker to secure an alleged debt of \$25,000 to Archibald C. Walter, who is a brother-in-law of defendant Walker. (This is the trust recorded in Liber 1967, folio 346, and offered in evidence by plaintiff.)

She further alleged that these conveyances were without consideration, and are fraudulent and void as against her; that Brandt has since conveyed all the interest held by him in District real estate to the Virginia-Alabama Company, which conveyance is fraudulent and void; that defendant Walker organized the Virginia-Alabama Company for the purpose of taking title to Walker's property; that no consideration passed from the corporation to Walker for the deed, and that the organization of the corporation and the deeds were part of the scheme to defraud complainant. Another conveyance of other property in Square 128 from Walker to Brandt is

recited, and by reason of certain conveyances of lots in
21 Square 1034 by Walker, she is entitled to have the promissory note for \$10,000 secured thereon, subject to a lien of \$5,000 decreed to be her property; that Walker has procured in the name of Brandt a loan on lots in Square 128 of \$1063, which sum belongs to complainant; that the property conveyed by Walker to Brandt and by Brandt to Virginia-Alabama Company includes among other property "an undivided interest in Lot 7, Square 834, in the City of Washington;" that all this property "was purchased with the aforesaid trust fund belonging to complainant, or its accretions, and that in equity and good conscience she is entitled to have the whole of said real estate decreed to be her property."

The prayers are (1) for an accounting of the administration of the trust reposed in him by complainant; (2) "that so far as said fund and the profits thereon can be traced into specific real or personal property, the same may be decreed to be the property of complainant and to be conveyed and transferred to her;" (3) for personal decree as to balance; (4) for discovery concerning administration of the trust and manner in which fund has been and is now invested; (5) "that all the real estate in the District of Columbia the title to which is vested in either said Bartow L. Walker, Paul J. Brandt or the Virginia-Alabama Company may be decreed to be the property of this complainant, and that the defendant in whom the title is vested may be decreed to convey the same to her; (6) for
22 injunction from transferring any real estate; (7) for the appointment of a receiver; (8) that accounts be stated; and (9) for general relief.

Answer of Bartow L. Walker admits he is complainant's husband; denies he was without means when he married complainant; that complainant did not entrust any moneys to him as trustee for the purchase of real estate therewith; denies transacting business with her capital or that he admitted any liability to her, says the complainant has no interest in his property; denies making any con-

veyance to hinder or delay complainant; admits making conveyance to Brandt and by Brandt to Virginia-Alabama Company, but denies the fraudulent intent; admits organizing the Virginia-Alabama Company for purpose mentioned in charter only; says conveyance of land in Square 128 was not to defraud complainant, and that she has no interest in the \$10,000 note; says complainant has no right to \$1063; admits conveyance of Lot 7 and other property, but says the same was not bought with her funds, and that she has no interest therein.

Answer of Paul J. Brandt says that he has no knowledge of the allegations of the bill except conveyance by Walker to him and by him to Walker, trustee, when he was clerk to Archibald C. Walter; denies intent to defraud, and says trust was released shortly thereafter; admits conveying land to Virginia Alabama Company, but denies intent to defraud; admits purchase in Square 128 for use of Walker; and denies \$1063 belongs to complainant.

The answer of the Virginia-Alabama Company is substantially the same as the answer of Paul J. Brandt.

23 The decree dated June 5, 1896, says: "This cause came on to be heard and was submitted without argument for a consent decree, whereupon it is by the court this 5th day of June, 1896, adjudged, ordered and decreed that the following described real estate in the City of Washington, to wit: * * * and the south half of Lot Seven (7), Square Eight Hundred and Thirty-Four (834) be sold.

"That Michael J. Colbert and Leo Simmons and John Ridout be, and they are hereby appointed trustees to make said sale, and that the course and manner of their proceedings be as follows: * * * (Ordinary provisions of Equity Rule 91).

"All the money coming into the hands of said trustees except from sale of said Lot Fifteen (15), Square Ten Hundred and Thirty-Four (1034) and said part of Lot Seven (7), Square Eight Hundred and Thirty-Four (834) shall be distributed as follows: * * *

"Fourth. The proceeds of said Lot Fifteen (15), Square Ten Hundred and Thirty-Four (1034) and said part of Lot Seven (7), Square Eight Hundred and Thirty-Four (834), after making the aforesaid deductions for costs and commissions, shall be distributed as follows * * *

"One-third to said Genevieve E. Walker; and

"One-sixth to said Bartow L. Walker for the use of the said The Virginia-Alabama Company. * * *

24 "This decree shall be a full settlement of all claims and demands of said Genevieve E. Walker against said Bartow L. Walker or the defendant The Virginia-Alabama Company whether on account of the claims set up in this cause or on any other account whatsoever, and in lieu of any right to dower in any property of said Bartow L. Walker or The Virginia-Alabama Company.

W. S. COX, J."

For the purpose of showing common source of title, and reserving the right to attack the validity of the deeds so offered, counsel for plaintiff offered in evidence the following:

Certified copy from the Land Records of the District of Columbia purporting to be a tax deed for the property here involved from the Corporation of Washington to Samuel H. Platt, dated March 6, 1852, the same purporting to be made for a sale for taxes assessed against the same as the property of and in the name of William S. Walker for the years 1844, 1845, 1846, 1847 and 1848.

Counsel for plaintiff next offered in evidence certified copy from the Land Records of the District of Columbia purporting to be a tax deed for the property involved in this suit, dated December 23, 1873, from the Commissioners of the District of Columbia to Frank J. Bramhall, and reciting that it is made under a sale for taxes assessed in the name of Samuel H. Platt; whereupon counsel for defendant objected on the ground that Samuel H. Platt is not common source of title, and that the deed is void on its face. Counsel for plaintiff admitted that the deed is void on its face, but the court

25 overruled the said objection and admitted said deed in evidence, to which ruling counsel for defendant duly excepted.

Counsel for plaintiff next offered in evidence the proceedings in Equity Cause No. 3036, in which Enoch Totten was appointed trustee to sell said Lot 7, Square 834, and other land, as the property of Samuel H. Platt, deceased. The complainant in said cause was the widow of said Platt, and defendant objected on the ground that the equity court was without jurisdiction, which counsel for plaintiff admitted; but the court overruled the said objection and admitted the said proceedings in evidence, to which ruling counsel for defendant duly excepted.

Counsel for plaintiff next offered in evidence certified copy from the Land Records of the District of Columbia of a deed dated October 27, 1874, from said Enoch Totten, trustee, purporting to convey in fee said Lot 7, Square 834, to William L. Bramhall, to the admission of which counsel for defendant objected on the ground that said equity court being without jurisdiction the deed of said trustee conveyed no interest; but the court overruled the said objection and admitted said deed in evidence, to which ruling counsel for defendant duly excepted.

Counsel for plaintiff thereupon offered in evidence certified copies from the Land Records of the District of Columbia purporting to convey in fee said Lot 7, Square 834, as follows:

Frank J. Bramhall to Albert G. Hall, dated December 10, 1874.

Albert G. Hall to William L. Bramhall dated December 20, 1875.

26 William L. Bramhall to Nathan B. Clarke and William B. Todd, as joint tenants, dated March 8, 1877.

William B. Todd, as the survivor of said Nathan B. Clarke, to Nellie M. Simmons, dated April 26, 1888.

To the introduction in evidence of the last deed counsel for defendant objected on the ground that there is no showing that said William B. Todd is the surviving co-tenant, which counsel for plain-

tiff admitted; but the court overruled the said objection and admitted the said deed in evidence, to which ruling counsel for defendant duly excepted.

Thereupon, Isaac S. Lyon, the plaintiff, testified, in his own behalf, that the defendant at the time of bringing this suit was and still is in possession of the land involved in this suit, and that the fair rental value of the interest claim in said real estate is \$50 per year.

Whereupon, plaintiff rested his case.

Counsel for defendant thereupon moved the court to instruct the jury to return a verdict for the defendant on the grounds that plaintiff has failed toarraign title from the sovereignty to himself, to prove common source of title with defendant, or prior possession, or sufficient title from the common source with the right of possession, or to prove any title in himself with the right of possession sufficient to maintain the action of ejectment; but the court overruled the motion, to which ruling counsel for defendant duly excepted.

Whereupon, defendant by his counsel, for the purpose of showing an outstanding title in a third person not a party to the
27 suit, and based upon plaintiff's chain and claim of title, offered in evidence certified copy from the Land Records of the District of Columbia of a deed dated December 27, 1894, from Paul J. Brandt to Bartow L. Walker, purporting to convey in fee simple, and reciting as follows:

"the following described land and premises situate, lying and being in the District of Columbia, and distinguished as Original Lot numbered Seven (7) in square numbered Eight hundred and thirty four (834) and Lot numbered Fifteen (15) in square numbered One thousand and thirty four (1034). The above conveyance being given to correct an error in a conveyance dated November first 1894 and recorded December 11th 1894, conveying certain real estate in the District of Columbia from the said Walker to the said Brandt when it was not the intention of the said Walker to convey the above described real estate."

To the admission of this deed in evidence counsel for plaintiff objected on the ground that Brandt had exhausted his title under date of November 1, 1894, by conveying the legal title to Walker as trustee, who in turn conveyed the legal title to the Virginia-Alabama Company, and on the ground that the deed is immaterial and is subordinate to the trust deed. The court sustained the said objection, to which ruling counsel for defendant duly excepted.

Thereupon counsel for defendant next offered in evidence the two papers following:

Recorded May 1, 1893, 1.39 P. M.

(1) Real Estate Tax Sale, District of Columbia, April 11 to 22, 1893.

474 (5) Date.	Square.	Lot.	To whom assessed.	Items of sale.	Tax.	Penalty or interest.	Adv.	Amount sold for.	Surplus.	To whom sold.	475
Apr. 12 * Apr. 13 * “ * * (17)	834 *	7 *	* * * Bramhall, A. T.... * *	All tax for year ending June 30 /92.	12.01 *	* * * * 3.36 *	1.20	16.57	* *	F. G. Aukam, 6th & F St. N. W.	499

OFFICE OF COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
WASHINGTON, May 1, 1893.

We hereby certify that the above exhibit is a true statement of all property sold to individuals at the tax sale April 11 to 22, 1893. All other property sold at said sale was bought for and by the District of Columbia.

JOHN W. ROSS,
MYRON M. PARKER,
WM. T. ROSSELL,
Commissioners of the District of Columbia.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, June 11, 1906.

This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1797 at fol. 466 et seq. one of the Land-Records of the District of Columbia.
[SEAL.]

R. W. DUTTON,
Deputy Recorder of Deeds.

Real Estate Tax Sale, District of Columbia, April 7 to 20, 1891.

Washington City (arranged numerically).

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Washington City (continued).

341
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Date.	Square.	Lot.	To whom assessed.	Items of sale, tax for year ending June 30 / 90.	Tax.	Penalty or interest.	Adv.	Amount sold for.	Surplus	To whom sold.
Apr. 8	769	Part 4	Sanford, Geo.	All 3.18	.89	.20	4.27	John G. Slater.
	834	* * *	* * *	* * *	* * *			* * *		* * *
	* * *	7	Walker B.L. & others.	do.	" 13.01	3.64	.20	16.85	F. G. Ankam.
				* * *			* * *			
384										385
35										35

OFFICE OF THE COMMISSIONERS OF THE DISTRICT OF COLUMBIA,
WASHINGTON, April 30, 1891.

We hereby certify that the above exhibit is a true statement of all property sold to individuals at the tax sale April 7 to 20, 1891. All other property sold at said sale was bought for and by the District of Columbia.

J. W. DOUGLASS,
JOHN W. ROSS,
H. M. ROBERTS,
Commissioners of Dist. Columbia.

DISTRICT OF COLUMBIA,
OFFICE OF THE RECORDER OF DEEDS, June 11, 1906.
This is to certify that the foregoing is a true and verified copy of an instrument as recorded in Liber No. 1576 at fol. 316 et seq. one of the Land-Records of the District of Columbia.

R. W. DUTTON,
Deputy Recorder of Deeds.

[SEAL.]

30 To the admission of these in evidence counsel for plaintiff objected, which objection was by the court sustained, to which ruling of the court counsel for defendant duly excepted. Here defendant closed his defense.

Counsel for plaintiff thereupon moved the court to instruct the jury to return a verdict in favor of the plaintiff for the possession of the interest in the land involved in this suit, to which counsel for defendant duly objected; but the court overruled the objection, to which ruling of the court counsel for defendant duly excepted.

Thereupon plaintiff's counsel asked an instruction for the plaintiff for mesne profits from November 1, 1905.

Whereupon the court charged the jury as follows: Gentlemen of the Jury, under the evidence that has been offered here the court is of opinion that there is no escape from the conclusion that the legal title is in the plaintiff, and that plaintiff is entitled, as matter of law, to the possession of the property. He also claims a money verdict for the value of the use and occupation of the land during the time the defendant has been in possession, from November 1, 1905, up to the rendition of your verdict. The value of the occupation of the land is equivalent to the rental value. Therefore, you will determine from the evidence in the case the fair rental value of this tract of land from November 1, 1905, up to date. You will not be precluded by the opinion that the plaintiff has given on that point. If your opinion is different, you may find what you think is fair.

31 The defendant by his counsel duly excepted to that part of the charge of the court to the jury which said "that plaintiff is entitled, as matter of law, to the possession of the property."

Thereupon the jury retired to consider of their verdict, and afterwards returned into court and rendered a verdict in favor of the plaintiff for the possession of an undivided one-half of the north half of Lot 7, Square 834, City of Washington, District of Columbia, and for \$129.00, mesne profits.

Be it further remembered that each of the foregoing exceptions to the rulings of the court mentioned in this bill of exceptions was separately and severally made and taken at the time thereof, and before the jury retired to consider of their verdict; that the presiding justice at the trial thereof entered the same in his minutes at the time of the taking of the same; and that now at defendant's request the same are separately and severally embodied in this bill of exceptions and signed and made a part of the record in this case this 14th day of July A. D. 1908, now for then; and that the above contains all of the testimony and other proceedings had at the trial of said cause.

DAN THEW WRIGHT, *Justice.*

Settled by consent.

WM. HENRY WHITE,
Att'y for Def't.
JNO. RIDOUT,
For Pl'ff.

32

Designation of Record.

Filed July 10, 1908.

In the Supreme Court of the District of Columbia.

At Law. No. 49305.

ISAAC S. LYON, Plaintiff,

vs.

ISAAC B. BURSEY, Defendant.

The Clerk in making up the record on appeal in this case will please include the following:

1. Declaration.
2. Plea.
3. Joinder of issue.
4. Memorandum of trial by jury.
5. Verdict.
6. Memorandum of disposition of motion for new trial and judgment.
7. Memorandum of filing of appeal bond.
8. Bill of exceptions.
9. Extensions of time to file transcript, if any.

WM. HENRY WHITE,
Attorney for Defendant.

Service of a copy of the above accepted this 10th day of July, A. D. 1908.

JNO. RIDOUT,
Attorney for Plaintiff.

33

Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, *District of Columbia, ss:*

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 32 both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 49305 At Law, wherein Isaac S. Lyon is Plaintiff and Isaac B. Bursey is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 7th day of August, A. D. 1908.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk,*
By ALF G. BUHRMAN,
Ass't Clerk.

Endorsed on cover: District of Columbia supreme court. No. 1940. Isaac B. Bursey, appellant, *vs.* Isaac S. Lyon. Court of Appeals, District of Columbia. Filed Aug. 12, 1908. Henry W. Hodges, clerk.